IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.90 OF 1997

Hirabai Dadarao @ Shrikant Patole)
Age 24 years, Occ: Household,)
Residing at S.No.110,)
Ramtekadi Zopadpatti, Pune.)
(At present detained in Yerawada)
Central Prison, Pune.)).. Appellant

Vs.

The State of Maharashtra.).. Respondent

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Shri Sunil Kadam for the Appellant - absent.

Smt.V.R.Bhonsale, APP for State.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 14th JULY, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Being aggrieved by her conviction for offence punishable under Section 302 of Indian Penal Code and resultant sentence of imprisonment for life and fine of Rs.5,000/- imposed upon her by the learned Additional Sessions Judge, Pune, the appellant has preferred this appeal.

2. Facts which led to the prosecution of the appellant are as under:-

. About 8 years before the incident dated 19th October, 1994, victim Anita was married to Dadarao @ Shrikant. After the marriage, Anita went for delivery to her parent's house. Dadarao did not take Anita back in the matrimonial home. This led to initiation of proceedings for maintenance in the court of Judicial Magistrate, First Class, Barshi, District - Solapur. A compromise was reached under which Anita returned to her matrimonial home at Ramtekadi, Pune, but found that Dadarao married the present appellant i.e. Hirabai, who was residing with Dadarao. This naturally led to quarrels.

3. The appellant wanted Anita to leave the house. Since this was not to happen, on the incidental day, Hirabai poured kerosene on the person of Anita and set her on fire. After extinguishing the fire, she was taken to Sasoon Hospital, Pune, where she gave dying declaration to the learned Judicial Magistrate, First Class, indicating that Hirabai had set her on fire. Anita succumbed to her injuries about two days later in the hospital. After performing inquest on her dead body, her body was sent for post-mortem examination. The post-mortem examination revealed that Anita had died of homicidal burns.

4. An offence was registered and investigation commenced. In course of investigation, police examined several witnesses, seized incriminating articles, sent them to Forensic Science Laboratory, and on completion of investigation sent the charge sheet to learned Judicial Magistrate, First Class, Pune Cantonment, who committed the case to the court of Sessions, Pune.

5. The learned Additional Sessions Judge, Pune, framed charge of offence punishable under Section 302 of Indian Penal Code against the appellant who pleaded not guilty and claimed to be tried. Hence, the accused was put on trial. In an attempt to bring home guilt of the accused, the prosecution examined 12 witnesses. Upon consideration of the prosecution evidence and defence raised, the learned Additional Sessions Judge, Pune, held the accused guilty of offence punishable under Section 302 of Penal Code and sentenced her to undergo imprisonment for life and fine of Rs.5,000/-. Aggrieved thereby, this appeal has been filed.

6. The appellant was admitted to bail after appeal was entertained by this Court. The appellant was represented by her own counsel. Yet, when the appeal came up for hearing before us, neither the

appellant nor her counsel chose to remain present in order to assist us in deciding the appeal. Hence, we had to proceed to consider the appeal without the assistance of learned counsel for the appellant. With the help of the learned Additional Public Prosecutor, we have re-appreciated the entire evidence in order to find out whether the conclusions drawn by the learned Trial Judge can be upheld.

7. It may be seen from the inquest at Exhibit 7 drawn up in Sasoon hospital on 21st October, 1994 that the victim had sustained a number of burn injuries. Dr.Laxmikant Kashinath Bade, who conducted post-mortem on the dead body of the victim, was examined as P.W.7. He proved notes of post mortem examination at Exhibit-20. He concluded that victim had died due to shock, as a result of burn injuries. The witness was not at all subjected to any cross-examination. Thus, the fact that the victim met with death on account of burn injuries need not be in dispute.

8. P.W.1-Bhanudas Bhiva Kuchekar is a neighbour of the parties. He stated that after Anita came to reside with Dadarao, there were quarrels amongst Dadarao, Anita and Hirabai. He stated that on 19th October, 1994, he noticed flames coming out of the house of Dadarao and saw that Anita was in flames.

People gathered and extinguished fire and he informed the police on telephone. He also took victim to Sasoon Hospital. He took address of the relatives from the victim and informed them accordingly. Cross-examination of this witness does not reveal anything to disbelieve his entire version.

9. Similar is the version of P.W.2-Sou.Kiskindabai Balu Povale, another neighbour, who too noticed quarrels. She however stated that Hirabai had gone to stay at her parents' house nearby but used to come to the house of Dadarao. P.W.5-Laxman Baburao Khavale, another neighbour, states that he saw flames coming out of the house of Anita and Anita was in flames. After extinguishing fire, Anita was taken to Sasoon Hospital. In course of cross-examination, it was sought to be extracted from him that Anita gave some different account of the manner in which she caught fire. However, he stated that he did not know what Anita told other persons who had gathered at the spot. He denied the suggestion that he was falsely stating that the victim-Anita, Hirabai and Dadarao were living together.

10. P.W.6-Anusaya Bhagwat Gaikwad, Aunt of the victim, stated about the quarrels between the parties and presentation of petition for maintenance in the

Court at Barshi. She stated that for about five years, Anita was at her parental house. She seems to be knowing both the families of Anita as well as Hirabai. Her cross-examination reveals some omissions which do not diminish the value of her testimony to the effect that there had been matrimonial discord between Anita and Dadarao leading to a case for maintenance being filed in Court at Barshi.

11. P.W.9-Kantabai Murlidhar Sathe, mother of victim, also states about quarrels between the parties, proceedings for maintenance in Barshi Court, etc. She stated that on receiving information about the said incident, she came to hospital and learnt from her daughter Anita that Hirabai, the present appellant, had poured kerosene on the person of victim and set the victim on fire.

12. P.W.8-Dr.Pravin Chugalal Jain claims that he was working as Medical Officer in Burns Ward at Sasoon Hospital. He was the first independent authority who met the victim after the incident. He stated that, at about 9.35 p.m., when he was admitting Anita, she had 100% burns. Anita gave him history that there was quarrel between her, her husband and his second wife. Her husband was drunk and his second wife poured kerosene on Anita and set her on fire. He stated that

he made a note of history in the case papers, at Exhibit - 25. The entire case papers were filed on record. According to Dr.Jain, on 20th December, 1994, when PSI wanted to record statement of Anita, he was present. He examined Anita. He made endorsement at Exhibit-26A on which, P.W. 11 - PSI Chandu Janardan Thakur recorded statement of Anita vide Exhibit-35. Cross-examination of this witness was aimed in establishing that the mental faculties of Anita were not working properly and, therefore, she may not have been well-oriented to make a statement. However, cross-examination is of a general nature. Though it shows that general condition of the patient was poor, Dr.Jain specifically denied that the patient was not fit to make any statement. Also, there is no reason to disbelieve P.W. 11 - PSI Thakur about the statement at Exhibit-35 recorded by him.

13. Dr.Jain seems to have been again required to examine the patient when the J.M.F.C., Shri Pawar recorded dying declaration on 19th October, 1994 at 11.40 p.m. He certified that the patient was fit to give a statement. He proved his endorsement at Exhibit-27A. He admitted that he had not mentioned in the case paper that he had again checked the patient at that time. But this is a small omission and need not affect the value of dying declaration recorded by

a Judicial, Magistrate, First Class. Apart from the evidence of Medical Officer, it will be appropriate to presume that Judicial Officer too would take necessary care to ensure that he records statement properly. Shri Pawar, Judicial Magistrate, First Class, is not an Honorary or Special Magistrate but regular Judicial Magistrate, First Class in judicial service of the State and thus well versed in requirement of procedure. He was examined as P.W.10. He proved the statement recorded by him at Exhibit-27. He stated that he had recorded dying declaration after duly following instructions in that behalf in the Manual. He stated that the Medical Officer had examined the patient in his presence. He stated that Anita had told him that Hirabai poured kerosene on her person and set her on fire. There is no reason to disbelieve the word of a responsible judicial officer.

14. Apart from this evidence, there is other evidence of panchanama of spot proved by P.W.3-Pandurang Sadhu Telange which shows that there was a rockel can with one or two used match-sticks. There was smell of kerosene on the floor.

15. P.W.4-Bandu Vinayak Pardeshi proved seizure of clothes of accused Hirabai. P.W. 12 - Dy.S.I. Vijay Shankarrao Dalvi conducted investigation.

16. It may be seen from the review of the evidence taken above that the victim and the accused had a cause to quarrel. The victim's re-entry in the matrimonial house must have naturally angered Hirabai. Therefore, there was motive enough to eliminate the victim. Neighbours too have stated about the quarrels between the victim Anita and the appellant. Neighbours also stated that the victim was seen in flames and taken to Sasoon Hospital. P.W.8-Dr.Jain was the first authority to whom the victim conveyed that she had been set on fire by the appellant. Apart from this, the victim made similar statement to Shri P.W.10-Balwant Wamanrao Pawar, Judicial Magistrate, First Class, Cantonment Board, Pune, who recorded dying declaration, and to PSI Thakur (P.W.11). She also made similar statement to her own mother. All these statements are consistent. There is no reason why the victim would make a false statement in the expectation of her death. There is nothing to indicate that the victim had attempted to commit suicide or had accidentally caught fire.

17. In view of this, on re-appreciation of the entire evidence, we hold that the learned Trial Judge rightly convicted the appellant of offence punishable under Section 302 of Penal Code and inflicted sentence of

imprisonment for life and fine of Rs.5,000/- on her. We do not see any reason to interfere in the order passed by the learned Additional Sessions Judge, Pune.

18. In the result, the appeal fails and is dismissed. The appellant-Hirabai Dadarao Patole is on bail. She shall surrender to her bail before the learned Additional Sessions Judge, Pune. The learned Additional Sessions Judge shall take steps to commit the appellant-accused to prison to serve out her remaining sentence.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)